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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,158	01/02/2004	Victor L. Lebron	PC-1545	1806
23717	7590	09/09/2004		
LAW OFFICES OF BRIAN S STEINBERGER 101 BREVARD AVENUE COCOA, FL 32922			EXAMINER THOMAS, DAVID B	
			ART UNIT 3723	PAPER NUMBER

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/751,158

**Applicant(s)**

LEBRON, VICTOR L.

**Examiner**

David B. Thomas

**Art Unit**

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/2/04</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Objections*

1. Claims 13-20 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The examiner notes that claims 13-16 merely recite specific structural elements, and as such, fail to further limit the method of opening and closing a shutter and window with t-shaped pins. Therefore, claims 13-16, although considered, have not been given patentable weight, as it has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961). The examiner also notes that claims 17-20, also considered, are drawn to method steps in forming the tool that is used in the method of opening and closing a shutter and window, and as such fails to further limit the method, and, furthermore, is not germane to the issue of patentability of the device itself.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozak (6,715,384), in view of Payne et al. (6,010,154) and Lam (6,095,016).

The examiner notes that the preamble to claims 1 and 12 are directed to using the tool for shutters or windows having a crank knob with T-shaped pin knobs, however, the preamble has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure, or the manner in which a claimed apparatus is intended to be employed, as such does not differentiate the claimed apparatus from a prior art reference, or references, that satisfies the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

4. Kozak ('384) discloses a multi-functional device that is capable of rotating various devices. The tool of Kozak ('384) includes an elongated member having first end adapted to be attached to one of a power tool or a socket wrench, and a second end; an adapter head attached to the second end of the elongate member having slots for engaging various devices. Kozak ('384) discloses the invention as claimed except for the provision of *irregular* slots, or a particular length and diameter. Payne et al. ('154) discloses a similar device and teaches that the work engaging end of the device is to include *irregular* slots such that the tool may appropriately engage a device having a cross member, i.e. T-shaped pin knobs. Lam ('016) teaches the provision of an elongate member such that the tool is capable of being used from a distance from the object upon which the tool is being used. Therefore, upon consideration of the prior art of record as a whole, it would have been obvious to one having ordinary skill in the art

at the time the invention was made to have modified the multi-functional tool of Kozak ('384) by providing irregular shaped slots, such as the slots as taught by Payne et al. ('154), such that the tool has better engagement with a workpiece having a cross-member, i.e. T-shaped pin knobs, and by providing greater length to the tool, as taught by Lam ('016), such that the tool may be effectively used from a distance. Regarding the particular length and diameter of the tool, as in claims 2 and 20, the examiner respectfully contends that changes in size, or a particular size vs. the prior art of record, are not sufficient to patentably distinguish over prior art satisfying the structural limitations as claimed. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). The examiner also notes that the device of Kozak ('384), as modified by Payne et al. ('154) and Lam ('016), is fully capable of performing the method as claimed.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bird et al., Gracia et al., McKivigan, Murray, Onofrio, and Talbot each disclose a device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. Thomas whose telephone number is (703) 308-4250. The examiner can normally be reached on 7-4 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on (703) 308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*DBT*

dbt



David B. Thomas  
Patent Examiner  
Art Unit 3723